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RUCNFUR/DARFUR COLLECTIVE  
RUEHZJ/HUMAN RIGHTS COUNCIL COLLECTIVE  
RUEHGG/UN SECURITY COUNCIL  
RUEHBW/AMEMBASSY BELGRADE 0001  
RUEHLM/AMEMBASSY COLOMBO 0657  
RUEHDO/AMEMBASSY DOHA 0290  
RUEHPF/AMEMBASSY PHNOM PENH 0731  
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C O N F I D E N T I A L SECTION 01 OF 03 TOKYO 001434

SIPDIS

DEPT FOR S/WCI: CLINT WILLIAMSON, SHAUN COUGHLIN

E.O. 12958: DECL: 06/25/2019

TAGS: AORC PHUM PGOV PINS PREL JA

SUBJECT: ENDING THE CAMBODIAN WAR CRIMES TRIBUNAL DEADLOCK:  
ANTI-CORRUPTION MECHANISM PROPOSED TO JAPAN

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Classified By: A/DCM R. Post per (1.4b, d)

11. (C) SUMMARY: During meetings May 14-15 with senior officials of MOFA's First Southeast Asia Department, as well as with a Japanese judge at the Extraordinary Chambers in the Courts of Cambodia (ECCC), S/WCI Ambassador Clint Williamson suggested a possible solution to the logjam in negotiations between the Royal Government of Cambodia (RGC) and UN regarding an anti-corruption mechanism. The Ambassador floated the idea of establishing an independent counselor position, filled by either a Cambodian or international nominee, to receive allegations and seek to resolve them in a discreet manner. Japanese interlocutors expressed interest in the idea, and said they would take it under consideration and relay details to their Ambassador in Cambodia. Other topics raised included future U.S. engagement with the International Criminal Court (ICC) and the humanitarian crisis in Sri Lanka. END SUMMARY.

PROPOSED ECCC ANTI-CORRUPTION MECHANISM

2.(C) In meetings with senior MOFA officials, including Deputy Director-General Shigeyuki Hiroki and Deputy Director-General Kazuhide Ishikawa, as well as Judge Motoo Noguchi, a Japanese judge working at the ECCC, Ambassador Williamson highlighted the many positives at the Court, notably the beginning of the Duch trial. He acknowledged that the government of Japan, as the largest donor to the KRT, deserved a great deal of credit for this progress. At the same time, corruption allegations threatened the credibility, future progress, and legacy of the tribunal. While the UN and RGC had come close to agreeing to an anti-corruption mechanism in the past, a final resolution

remained elusive. Williamson noted to counterparts that his current trip was aimed at offering a possible way forward on this issue. He then outlined the establishment of an independent counselor position to receive corruption allegations from both domestic and international employees of the Court and address them in a discreet manner with relevant parties. Use of a single position avoided the complex dual-monitoring structures previously proposed, which called for Cambodian staff to report to a Cambodian monitor and UN staff to report to a UN monitor. Inevitably this led to negotiation breakdowns, over whether Cambodia staff could report to either monitor. The UN insisted on this, while the RGC demanded that each side could report only to its respective monitor. This new position could be either a Cambodian national on an international contact or an international citizen, however the key point was ensuring the individual and function were independent from the RGC to ensure credibility. Williamson noted that given Japan's relationship with Cambodia, a Japanese may be an ideal candidate for independent counselor who would be agreeable to both sides. In principle the person employed in this function would deter future corruption and not investigate past allegations.

¶3. (C) MOFA officials and Judge Noguchi stated this was the first they had heard of the idea, but would raise it with colleagues. Previously, Japan floated the idea of donor embassies in Phnom Penh playing the role of "receptionist" by receiving and then forwarding corruption complaints to the RCG. However donors ceased pursuing this option when it became clear that embassies would become too enmeshed with ECCC operations. With respect to Ambassador Williamson's proposal, Japanese officials predicted the hardest part would

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be finding the right person. MOFA officials thanked Williamson for suggesting this role for a Japanese, but believed the Cambodian government was unlikely to accept an international candidate. They noted that Japanese Ambassador to Cambodia Katsuhiro Shinohara would be key person in the decision-making process, and Williamson responded that he would meet with Shinohara and the other donor Ambassadors in Phnom Penh the following week to discuss the plan. More broadly, all officials believed that corruption is an embedded aspect of Cambodian culture that could not be changed through the Court's operations. Officials commented, "There is an Asian way of doing things in a subtle fashion versus forcing international standards into practice." Ambassador Williamson agreed that the intent was not to effect systemic change in the Cambodian government. At the same time it was important to separate the ECCC from development projects in Cambodia which may assume tacit allowance of corruption. Rather, the ECCC would be compared to other international courts, such as the Yugoslavia and Rwanda tribunals, and must therefore measure up to international justice standards to be credible.

¶4. (C) Separate from the corruption issue, Judge Motoo Noguchi noted other concerns at the ECCC, including funding gaps, possible delays in proceedings, and lack of a Registrar. Noguchi recalled that at least twice staff on the Cambodian side were late receiving their salaries, being paid only after a sudden cash infusion from the Japan. Funding uncertainty could lead qualified international employees to seek more secure employment at other international courts, resulting in a loss of experience among staff. Regarding delays, he believed the Office of the Co-Investigating Judges was not working efficiently and may not meet forecasts with respect to trial dates. Lack of a Registrar was problematic because since the departure of David Tolbert, there had been no UN official of sufficient seniority to meet with RGC counterparts and make decisions on behalf of the UN. This was frustrating for both sides. It did not help that the most senior UN official at the Court, Deputy Director Knut Rosanhaug, was viewed as confrontational by the RGC and "likely on their enemies list. "

FUTURE US ENGAGEMENT WITH THE ICC

15. (C) In meetings with Hiroki and Parliamentary Vice-Minister for Foreign Affairs Masahiko Shibayama, Ambassador Williamson was asked about the future of US engagement with the ICC under the Obama Administration. Williamson first expressed his condolences regarding the death of Judge Fumiko Saiga, the first Japanese judge in the ICC. He next explained that the U.S. had steadily improved its relationship with the ICC over the last two years of the Bush Administration. A constructive working relationship would continue under President Obama. Williamson noted that the new administration is currently conducting a comprehensive review of ICC policy. Ambassador Hiroki indicated that Japan looked forward to the eventual ascension of the U.S. to the ICC, saying that absence of the US and the legal experience of its citizens deprived international law of a valuable resource.

6.(C) In contrast, DG Tsuruoka was less optimistic about U.S. ascension to the ICC. The "principle of universal justice would be compromised" if too many concessions were made to the U.S. in order to get it to become a member. Further, the ICC should be purely a judicial organ not "subordinate to the

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Security Council which is political organ." Ambassador Williamson responded that concerns regarding politicization of the ICC had some legitimacy, and recalled the attempt to prosecute only senior U.S. officials following the NATO bombing of Kosovo in 1999. The DG also expressed concern that the ICC was perceived by many as a "European Court for African Issues." Williamson replied that this perception did exist and was a key reason why Japan should become more active in the institution. In the near term it could consider engaging moderate African countries in advance of the June African Union (AU) meeting in support of maintaining membership in the ICC. Tsuruoka replied that Japan had already engaged them on the issue and that, in general, the most vocal voices in the AU did not represent the majority.

CONCLUSION OF ICTY AND ICTR

17. (C) Separately, the two briefly discussed international courts elsewhere. In regards to the length and cost of the Tribunals in Yugoslavia and Rwanda, Hiroki stated "Japan shares your financial concerns." He said had not yet had time to review detailed proposals but would probably accept the Secretary General's decision as long as costs were attached.

Sri Lanka

18. (C) MOFA officials viewed China as the dominant Asian voice in Sri Lanka, and believed that Japan should play more of a role. They felt Japan's interest level was too low, due in part to the mass media's focus on domestic issues. One official stated that a balanced approach was necessary to the emerging humanitarian catastrophe, as opposed to too much pressure which might backfire.

19. (U) Ambassador Williamson has cleared this cable.

ZUMWALT